

VII, the ADEA, the Equal Pay Act or the Rehabilitation Act and to seek judicial review of the Department's refusal to implement the ordered relief in accordance with the Administrative Procedure Act (5 U.S.C. 701 *et seq.*), and the mandamus statute (28 U.S.C. 1361), or to commence new proceedings in accordance with the appropriate statutes.

#### § 7.43 Settlement agreements.

(a) The Department shall make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, the administrative processing of complaints, including the pre-complaint counseling stage. These efforts shall include ADR. Any settlement reached shall:

- (1) Be in writing;
- (2) Identify the claims resolved;
- (3) Be signed by both parties and/or their designees; and
- (4) Otherwise comply with 29 CFR part 1614.

(b) Any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties. Final action that has not been the subject of an appeal or civil action shall be binding on the Department. If the Complainant believes that the Department has failed to comply with the terms of a settlement agreement or decision, the Complainant shall notify the Director of EEO, in writing, of the alleged noncompliance within 30 days of when the Complainant knew or should have known of the alleged noncompliance. The Complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased.

(c) The Department shall resolve the matter and respond to the Complainant, in writing. If the Department has not responded to the Complainant, in writing, or if the Complainant is not satisfied with the Department's attempt to resolve the matter, the Complainant may appeal to the EEOC for a determination as to whether the Department has complied with the terms of the settlement agreement or final decision. The Complainant may file

such an appeal 35 days after the Complainant has served the Department with the allegations of noncompliance, but must file an appeal within 30 days of the Complainant's receipt of the Department's determination. The Complainant must serve a copy of the appeal on the Department and the Department may submit a response to the EEOC within 30 days of receiving notice of the appeal.

#### § 7.44 Interim relief.

(a) When the Department appeals and the case involves removal, separation, or suspension continuing beyond the date of the appeal, and when the EEOC Administrative Judge's decision orders retroactive restoration, the Department shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified in the decision, pending the outcome of the Department appeal. The employee may decline the offer of interim relief.

(b) Service under the temporary or conditional restoration provisions of paragraph (a) of this section shall be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure, if the EEOC upholds the decision on appeal. Such service shall not be credited toward the completion of any applicable probationary or trial period or the completion of the service requirement for career tenure, if the EEOC reverses the decision on appeal.

(c) When the Department appeals, the Department may delay the payment of any amount, other than prospective pay and benefits, ordered to be paid to the Complainant until after the appeal is resolved. If the Department delays payment of any amount pending the outcome of the appeal and the resolution of the appeal requires the Department to make the payment, then the Department shall pay interest from the date of the original decision until payment is made.

(d) The Department shall notify the EEOC and the employee in writing at the same time the Department appeals that the relief the Department provides is temporary or conditional and, if applicable, that the Department will